

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGELIO MAY RUIZ,

Plaintiff,

v.

R. EHLERS,

Defendant.

Case No. 2:21-cv-00146-JAM-JDP (PC)

FINDINGS AND RECOMMENDATIONS
DENYING MOTION TO PROCEED IN FORMA
PAUPERIS AND REQUIRING PAYMENT OF
FILING FEE IN FULL WITHIN TWENTY-ONE
DAYS

ECF No. 2

OBJECTIONS DUE WITHIN 14 DAYS

Plaintiff, a state prisoner proceeding without counsel, has filed a complaint alleging claims under 42 U.S.C. § 1983 together with an application to proceed *in forma pauperis*. ECF No. 1 & 2. In an order filed March 15, 2021, I observed that it appeared that plaintiff is prohibited from proceeding *in forma pauperis* because he has previously had three actions dismissed for failure to state a claim. ECF No. 7; 28 U.S.C. § 1915(g). I noted that plaintiff would still be permitted to proceed *in forma pauperis* if his complaint alleged that he is in imminent danger of serious physical injury. But because the complaint's allegations—which are based on a discrete event occurring in the past—did not show him to be in imminent danger, I ordered him to show cause within twenty-one days why, in spite of his “three-striker” status, he should be allowed to proceed *in form pauperis*. ECF No. 8. I also warned plaintiff that failure to

1 provide an adequate justification for being allowed to proceed *in forma pauperis* would result in a
2 recommendation that his application be denied.

3 Plaintiff subsequently filed a motion for appointment of counsel. ECF No. 9. On May 5,
4 2021, I denied that motion but granted him until May 27, 2021 to show cause why he should be
5 allowed to proceed *in forma pauperis*. ECF No. 10. The deadline has passed, and plaintiff has
6 not responded to either the March 15 order or the May 5 order.

7 Accordingly, it is RECOMMENDED that:

8 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 2, be denied for the
9 reasons set forth in the March 15, 2021 order.

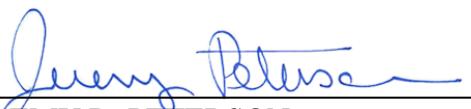
10 2. Plaintiff be ordered to pay the \$402 filing fee within twenty-one days of any order
11 adopting these findings and recommendations.

12 3. If plaintiff fails to pay the \$402 filing fee within twenty-one days of any order adopting
13 these findings and recommendations, this action be dismissed without prejudice.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
19 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
20 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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22 IT IS SO ORDERED.

23 Dated: August 13, 2021

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25 JEREMY D. PETERSON
26 UNITED STATES MAGISTRATE JUDGE
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